IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No. 340 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 21/12/2005 in WP No. 3062 OF 2005 on the file of the High Court.)

Between:

Irish Farm House and Resorts, Rep. by its V. Sanjeeva Reddy S/o Sri V. Raji Reddy, Indian, age 59 years, Occ: Agriculture, R/o Darmaram Village, Keesara Mandal,
Ranga Reddy District.

..... APPELLANT

AND

1. The Assistant Divisional Engineer,Operation A.P. Central Power Distribution Company Ltd,
Sainikpuri, Hyderabad.
2. The Divisional Engineer, Assessments, A.P. Central Power Distribution Company Ltd,
Urdu Hall Lane, Himayathnagar, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: Mr. K.V.RAJENDRA PRASAD

Counsel for the Respondents: Mr. V.Ajay Kumar

SC for A.P.TRANSCO

The Court at the stage of admission made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The Appeal is against the order passed on 21.2.2005 by the learned Single Judge disposing of the Writ Petition with certain directions.

Writ petitioner is aggrieved by the said order on the ground that it had questioned the notice of the first respondent dated: 11.2.2005 to be illegal and contrary to the decision of the Division Bench of this Court. On 11.2.2005, provisional assessment notice as envisaged under Section 126 of the Electricity Act, 2003 was served upon the appellant. On serving of such notice, the person on whom notice is served gets a right to file objections, if any, against the provisional assessment before the Assessing Officer, who after affording reasonable opportunity of hearing to the person concerned, has then to pass a final order of assessment. Against such final order of assessment, there is an appeal provided under Section 127, which can only be entertained, provided, 1/3rd of the assessed amount is deposited in cash or by way of bank draft. Without affording this opportunity, the petitioner-appellant was asked to deposit the amount of the provisional assessment and was also informed that pending enquiry, supply shall remain disconnected.

We have heard the learned counsel for parties.

The learned counsel for the respondents opposed the appeal on the ground that the appellant is neither a consumer nor a licensee, but has indulged in malpractice by directly tapping the electricity from nearby electricity LT overhead line. Therefore, such a person cannot be shown any indulgence, and, for that reason, respondents had called upon the appellant to pay the amount, and, for that reason alone, it was directed that electricity supply would remain disconnected, and, therefore, no interference is called for in the order directing the appellant to deposit a sum of Rs.35,000/-.

Sections 126 and 127 of the Electricity Act, 2003 do not make any distinction between a consumer or licensee, or, a person who directly taps the electricity. Section 126 pre-supposes unauthorized use of electricity by a person, which empowers the Assessing Officer to make provisional assessment and then to make it final only after issuance of show cause notice. Therefore, respondents have to follow the provisions of law and the procedure laid down in Section 126. The petitioner-appellant has to be afforded an opportunity to file reply to the show-cause notice and again given an opportunity of being heard, and, then only final order has to be passed. Law will have its own course thereafter. For that reason, we allow the appeal, set aside the impugned order and allow the Writ Petition with direction that within a period of one week from today, the appellant will file reply to the show-cause notice, and, thereafter, the respondents will proceed to pass final order of assessment after affording an opportunity of being heard to the appellant. No costs.

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DEVINDER GUPTA, C.J.

10.3.2005.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The Assistant Divisional Engineer,Operation A.P. Central Power Distribution Company Ltd,
Sainikpuri, Hyderabad.
2. The Divisional Engineer, Assessments, A.P. Central Power Distribution Company Ltd,
Urdu Hall Lane, Himayathnagar, Hyderabad.

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